

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 05CV10165-RGS

GREAT NORTHERN INSURANCE COMPANY,
As Subrogee of Jon and Abby Winkelreid
Plaintiff(s)

VS.

FERGUSON & SHAMAMIAN ARCHITECTS, LLP
and W.B. MARDEN COMPANY
Defendant(s) and Third Party Plaintiff(s)

VS.

THIRTY ACRE WOOD, LLC and
ELLIS AND SCHNEIDER
Third Party Defendant(s)

**MEMORANDUM IN SUPPORT OF MOTION OF THE THIRD PARTY DEFENDANT,
THIRTY ACRE WOOD, LLC, FOR LEAVE TO FILE FOURTH PARTY COMPLAINT**

The Third Party Defendant and Fourth Party Plaintiff, Thirty Acre Wood, LLC (“Thirty Acre”) submits this memorandum in support of its motion for leave to file and serve a Fourth Party Complaint against Consulting Engineering Services, LLC (“CES”). A copy of the proposed Fourth Party Complaint is attached to said motion.

In support of this motion, Thirty Acre states as follows:

F.R.Civ.P 14(a) provides, in relevant part:

At any time after commencement of the action, a defendant party, as a third-party plaintiff, may cause a summons and complaint to be served upon any person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff’s claim against the third-party plaintiff. . . .

. . . A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant.

Thirty Acre’s claim against CES arises out of the transaction or occurrence which is the subject of the Plaintiff’s claim against Thirty Acre Wood. This suit arises from the construction of a new

residence for the Plaintiff's insured, Jon and Abby Winkelreid, located at 15 Cathcart Road, Nantucket, Massachusetts ("Project"). Ferguson & Shamamian Architects, LLP ("Ferguson") provided architectural services in connection with the Project. CES provided engineering and consulting services in connection with the Project. Thirty Acre was the general contractor on the Project.

On or about January 19, 2004, water damage occurred at the Project, allegedly as a result of a water pipe which froze and burst. Said water pipe was installed as part of the humidification system at the Project, pursuant to the plans, recommendations and/or directions of CES and/or Ferguson.

The Plaintiff filed a Complaint against Ferguson and the plumbing sub-contractor, W. B. Marden ("Marden"), alleging that its insureds suffered damages as a result of the January 19, 2004 pipe break. Ferguson filed third-party complaint against Thirty Acre, alleging that Thirty Acre is directly responsible for the loss and is directly responsible to the Plaintiff, and/or responsible to Ferguson if Ferguson is found liable. Thereafter Plaintiff asserted direct claims against Thirty Acre

If Thirty Acre is found liable to Plaintiff and/or to Ferguson, CES may be liable to Thirty Acre for contribution and/or indemnification.

For all the foregoing reasons, the Third Party Defendant/Fourth Party Plaintiff, Thirty Acre Wood, LLC asks that this Court grant it leave to file a Fourth Party Complaint against Consulting Engineering Services, LLC.

Thirty Acre Wood, LLC
By its Attorney,

/s/ Frank S. Puccio, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on July 18, 2006.

/s/ Frank S. Puccio, Jr.
FRANK S. PUCCIO, JR./BBO# 407580

DATED: July 18, 2006

MRS/nmk
(0000WW-0588 cp#153)